

**Court No. - 34****Case :-** WRIT - C No. - 38312 of 2015**Petitioner :-** Bechu Lal Pal**Respondent :-** State Of U.P. & 3 Others**Counsel for Petitioner :-** M.B. Yadav**Counsel for Respondent :-** C.S.C.**Hon'ble Sudhir Agarwal,J.****Hon'ble Ajit Kumar,J.**

1. By means of this writ petition, the petitioner is seeking writ of mandamus directing respondents authorities as well as State authorities not to interfere in peaceful possession of the Arazi No. 1090 (M) measuring Area 918.27 square meter situated in Village Andava, Tehsil-Phoolpur, District Allahabad (hereinafter referred to as "land in question").

2. The contention advanced by learned counsel for the petitioner is that petitioner continued to be in possession over the land in question. It is further submitted that land was declared as surplus land vide order dated 9.12.1982 passed by Ceiling Authorities by the Prescribed Authorities and notice was issued under Section 10(5) of the Act, 1976 13.9.1995 asking the tenure-holder to voluntarily handover the possession over surplus land to the Ceiling Authorities but neither any such notice was served upon the petitioner nor, any further action was taken in the matter. It is further contended that father of the petitioner who was original tenure-holder did not surrender his possession over land in question even then no further proceedings to take forcible possession from tenure holder was initiated under Section 10(6) of the Act, 1976 in the meanwhile repeal act, 1999 came into force on 18.3.1999.

3. The argument therefore is that once the actual physical possession was not taken by the Ceiling Authorities of the land in question and no possession memo was prepared while Repeal Act, 1999 came into force, ceiling proceedings under Section 4 of the Repeal Act stood abated in respect of the land in question.

4. Under the circumstances, petitioner claims that land cannot be treated to have vested with the State Government, merely on account of the fact that it was declared surplus. The effect of the Repeal Act, 1999 is that entire ceiling proceedings stood abated and in view of the fact

that petitioner is entitled to enjoy possession over the land used the land in question as per his wish and Ceiling Authority and State Government cannot interference with the possession of the petitioner over the land in question.

5. Counter affidavit has been filed on behalf of the State Authorities including Ceiling Authorities and it has also been contended that in para 13 of the counter affidavit that once the notification has been issued under Section 10(3) of the act 1976, the land vested with the State Government and revenue records has also been accordingly corrected.

6. The argument advanced by learned Standing Counsel is that in the event of vesting of land with the State Government , the petitioner does not have any right as Repeal Act only come into force w.e.f 18.3.1999 whereas notification under Section 10(3) of Act, 1976 had already been issued 13.5.1995. However, with regard to the physical possession if any taken by the State Government entire counter affidavit is silent. It has not been stated anywhere as to when notice was issued under Section 10(6) of the Act and how the possession came to be transferred to the State Government when tenure-holder had never voluntarily surrendered his possession. There is letter annexed alongwith counter affidavit issued by the District Magistrate to the Secretary Awas Sahari Niyojan, Anubhag-6 U.P. in which it has been admitted that no such action or proceedings was initiated under Section 10(6) to take forcible possession and to execute memo of possession on the spot as was required to be done.

7. It is fairly stated by learned Standing Counsel that after coming into force of Repeal Act, exercise under Section 10(6) of the Act cannot be taken. In view of this admissions of fact and also the silence in the counter affidavit with regard to proceedings under Section 10(6) of the Act, 1976, we are bound to hold that ceiling proceedings stood abated over the land in question under Section 10(4) of the repeal act, 1999.

8. This writ petition is allowed. Respondents are directed not to interfere with the possession of petitioner over the land in question. The petitioner is at liberty to seek further necessary correction in the revenue records.

**Order Date :-** 30.11.2017  
Sanjeev

**Court No. - 34****Case :-** WRIT - C No. - 38312 of 2015**Petitioner :-** Bechu Lal Pal**Respondent :-** State Of U.P. & 3 Others**Counsel for Petitioner :-** M.B. Yadav**Counsel for Respondent :-** C.S.C.**In Re: Delay Condonation Appl. No. 168975 of 2016****Hon'ble Sudhir Agarwal,J.****Hon'ble Ajit Kumar,J.**

1. Perused the office report dated 22.12.2016. Service is deemed sufficient.
2. Heard.
3. Delay in filing substitution application is explained satisfactorily. It is hereby condoned. The application is accordingly allowed.

Order Date :- 30.11.2017

Sanjeev

**Court No. - 34****Case :-** WRIT - C No. - 38312 of 2015**Petitioner :-** Bechu Lal Pal**Respondent :-** State Of U.P. & 3 Others**Counsel for Petitioner :-** M.B. Yadav**Counsel for Respondent :-** C.S.C.**In Re: Substitution Appl. No. 168978 of 2016****Hon'ble Sudhir Agarwal,J.****Hon'ble Ajit Kumar,J.**

1. Heard.
2. Allowed.
3. Let substitution be carried out in due course.

Order Date :- 30.11.2017

Sanjeev



